NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA, Plaintiff,	)	
	)	Crim. No. 2001-198
v.	)	
CRISTIAN VARIELA-GARCIA, Defendant.	)	
v.		
	)	Crim. No. 2001-199
YAMILY ALOMIA-ORTIZ, Defendant.	)	
v.	)	
	)	Crim. No. 2001-200
GUSTAVO GIL-MUNOZ, Defendant.	)	
v.	)	Crim. No. 2001-201
YOHN BALBINO CHANTRI-GUZMAN, Defendant.	)	

ATTORNEYS:

Sara L. Weyler
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St. Thomas, U.S.V.I.
For the plaintiff,

Douglas J. Beevers
Assistant Federal Public Defender
St. Thomas, U.S.V.I.
For the defendants.

OPINION

Moore, J.

In a bench trial before the magistrate judge, defendants Cristian Variela-Garcia ["Variela-Garcia"], Yamily Alomia-Ortiz ["Alomia-Ortiz"], Gustavo Gil-Munoz ["Gil-Munoz"], and Yohn Balbino Chantri-Guzman ["Chantri-Guzman"] [collectively "defendants"] were convicted of attempting to enter the United States without inspection, in violation of 8 U.S.C. § 1325(a).[1] On appeal, Alomia-Ortiz, Gil-Munoz, and Chantri-Guzman argue that they were subject to custodial interrogation in violation of their rights under *Miranda v. Arizona*, 384 U.S. 436 (1966) and that the magistrate judge erred in denying their motions to suppress their statements. In addition, all four defendants aver that their convictions are insufficiently supported by the evidence. For the following reasons, I will affirm the convictions.

I. FACTS

At trial, special agent Kirk Thomas ["Thomas"] of the United States Immigration and Naturalization Service ["INS"] testified that, on the morning of June 5, 2001, he and other INS agents

[1] These four cases were joined for bench trial pursuant to a motion for joinder made by the federal public defender. The defendants agreed to a bench trial before the magistrate judge.

went to St. John in response to a call reporting illegal aliens on the island. Upon their arrival in St. John, however, they were unable to find any illegal immigrants.

Thomas testified that on his return to the INS office on St. Thomas later that day, Variela-Garcia was waiting in the deportation section of the office with three other adults and one child. Thomas processed Variela-Garcia that night, and explained that the defendant was seated at a chair by his desk, and that he was not handcuffed or otherwise restrained. Thomas began to interview Variela-Garcia, in Spanish and without *Miranda* warnings, and asked him his name, his nationality, and whether he had a passport. Variela-Garcia told agent Thomas his name and that he was from Colombia.

Defense counsel objected to the admission of Variela-Garcia's statements into evidence, arguing that they should be suppressed because they were taken before the defendant was read his *Miranda* rights. The magistrate judge overruled the objection, and admitted the testimony.

Thomas further testified that he advised Variela-Garcia of his *Miranda* rights only after he obtained his "biographic data." Variela-Garcia waived his *Miranda* rights and continued to answer Thomas' additional questions concerning his biographical information and how he entered the United States. Variela-Garcia

stated that he entered the country on June 5, 2001 and that he had come from Colombia, through St. Martin, by boat. He also stated that he was not inspected by any United States immigration official upon entry into the country.

INS special agent William Monk ["Monk"] testified that he also met the defendants at the INS office in St. Thomas on the evening of June 5, 2001. He did not process any of the defendants that evening, but instructed them to return to the INS office the following morning. On June 6, 2001, Gil-Munoz, Chantri-Guzman, and Alomia-Ortiz returned to the INS office. Monk testified that after placing the defendants in custody, and without administering *Miranda* warnings, he asked each of them individually, in Spanish, about his or her nationality. All of the defendants answered that they were from Colombia.

Counsel for the defendants reiterated his objection to the admission of these pre-*Miranda* warning statements. The magistrate judge overruled the objection and admitted the evidence, finding that "presenting oneself at the Immigration Office entitles the Immigration authorities to determine, without administering *Miranda* warnings, the nationality of the person to determine whether they need to proceed to investigation."

According to agent Monk, he delivered *Miranda* instructions to the defendants after they stated that they were from Colombia,

and the defendants all waived their individual *Miranda* rights. Alomia-Ortiz, Chantri-Guzman, and Gil-Munoz stated that they left Colombia, traveled to Curacao and St. Martin, and came to St. John by boat and entered the United States without inspection. In addition, Gil-Munoz stated that he asked for political asylum.

At the close of the government's case, the defendants moved for judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29. In addition, they moved for reconsideration of the magistrate judge's denial of their motion to suppress their pre-*Miranda* instruction admissions. In a written opinion, the magistrate judge denied the motion for reconsideration, concluding that the defendants had voluntarily walked into the INS office, that they were not under custody when asked about their nationality, and that *Miranda* instructions were not necessary at that point. The magistrate judge denied the judgment of acquittal, finding that each of the defendants had attempted to enter the United States improperly and that their physical presence in the United States was evidence of that. The defendants were sentenced to thirty days' imprisonment, with credit for thirty days already served.

The defendants now appeal their convictions, and argue that the magistrate judge erred in not suppressing their admissions and that their convictions are not supported sufficiently by the

evidence.

II. DISCUSSION

A. Jurisdiction

I have jurisdiction to review this appeal pursuant to 18 U.S.C. § 3402. In reviewing the defendants' claims, I apply the same standards of review that a court of appeals applies when considering appeals from a district court. *See* FED. R. CRIM. P. 58(g)(1)(2). Decisions denying motions to suppress evidence are reviewed for clear error with respect to the magistrate judge's underlying factual findings, and I exercise plenary review of his application of the law to those facts. *United States v. Perez*, 280 F.3d 318, 336 (3d Cir. 2002) (citing *United States v. Riddick*, 156 F.3d 505, 509 (3d Cir. 1998)). In determining whether a conviction is supported sufficiently by the evidence adduced at trial, I review the evidence "in a light most favorable to the Government." *United States v. Gambone*, 314 F.3d 163, 169-70 (3d Cir. 2003) (quoting *United States v. Antico*, 275 F.3d 245, 260 (3d Cir.2001)). I must sustain the verdict if there is substantial evidence, and I can neither "weigh evidence or determine the credibility of witnesses in making this determination." *United States v. Beckett*, 208 F.3d 140, 151 (3d Cir. 2000).

B. The Magistrate Judge Erred in Admitting the Defendants' Un-Mirandized Admissions

Alomia-Ortiz, Gil-Munoz, and Chantri-Guzman argue that their statements were taken in violation of their rights under *Miranda* and that the magistrate judge erred in denying their motions to suppress them.[2] In addition, Chantri-Guzman alleges that because he was seeking political asylum, it would be reasonable to assume that he may have been referred to the INS office by an official at the St. John inspection station. The government counters that the defendants were not in custody when the INS agent inquired as to their nationality and that, thus, *Miranda* warnings were not necessary.

In *Miranda*, the United States Supreme Court held that the Fifth Amendment to the United States Constitution prohibits "custodial interrogation" unless the government first gives the prescribed warnings to the suspect. 384 U.S. at 498-99. In *Pennsylvania v. Munizi*, a plurality of the Supreme Court stated that *Miranda* warnings are not necessary before asking "routine booking" questions asked to secure "biographical data necessary to complete booking or pretrial services." 496 U.S. 582, 601 (1990). The Court noted, however, that questions designed to obtain inculpatory admissions, even when asked during booking,

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[2] Variela-Garcia does not raise this issue in his brief.

are not subject to the exception. *Id.* at 601 n.14. *See also United States v. Gonzalez-Sandoval*, 894 F.2d 1043, 1046 (9th Cir. 1990) (noting exception to the general rule concerning booking questions when "the elicitation of information regarding immigration status is reasonably likely to inculpate the respondent").

In *Gonzalez-Sandoval*, the appellant, pursuant to the terms of his parole, returned to the police station to provide a urine sample. 894 F.2d at 1046. His parole officer asked him whether he had ever been deported. Gonzalez-Sandoval responded that he had been, but explained that he was then legally in the United States. *Id.* Subsequently, a United States border patrol officer interviewed Gonzalez-Sandoval in a police department holding cell and asked him where he was born and whether he had documentation verifying his legal entry into the United States. *Id.* Gonzalez-Sandoval was read his *Miranda* rights only after the border patrol agent ran a series of records checks and confirmed the appellant's illegal status in the United States. *Id.* The United States Court of Appeals for the Ninth Circuit held that, because the responses were elicited with the purpose of proving the charges of illegal entry and the status of being a deported alien found in the United States, they were taken in violation of *Miranda* and the district court judge erred in denying Gonzalez-

Sandoval's motion to suppress the statements. *Id.* at 1047. The Court went on to rule, however, that the admission of Gonzalez-Sandoval's statements was harmless error since, in addition to the admissions, the government also introduced into evidence the record of the appellant's prior deportation and the confession he made after having received *Miranda* warnings, which constituted "overwhelming evidence" of his guilt. *Id.* The United States Court of Appeals for the Third Circuit, in a non-precedential opinion, relied on the reasoning in *Gonzalez-Sandoval*, and reached the same conclusion in a similar case. *See United States v. Carvajal-Garcia*, Crim. No. 01-4532, 2002 U.S. App. LEXIS 25434, at *15-20 (3d Cir. November 27, 2002) (finding trial court erred in admitting alien's admissions of nationality where INS agent, without giving *Miranda* instruction, interrogated appellant while he was held in a correctional facility, but concluding error was harmless because the government relied on fingerprints and pretrial stipulations to establish status as previously deported alien at trial and did not rely on the statements).

Applying the principles in *Gonzalez-Sandoval* and *Carajal-Garcia* here, I find that the magistrate judge erred in denying the motions to suppress. According to the uncontradicted evidence in the record, the defendants were in custody when they were booked at the INS office and agent Monk did not read them

their rights under *Miranda* before inquiring about their nationality. I also find, however, that the effect of this error was harmless, because each of the defendants admitted to having traveled from Colombia to the Virgin Islands and to not having followed proper admission procedures after the agents read their *Miranda* rights to them and they had waived those rights. *See United States v. Johnson*, 816 F.2d 918, 923 (3d Cir. 1987) (holding that "where a subsequent confession is obtained constitutionally, the admission of prior inadmissible confessions was harmless error"). Accordingly, I find the admission of the defendants' un-Mirandized admissions was harmless error.

C. The Defendants' Convictions are Sufficiently Supported by the Evidence

All four defendants argue that the government did not provide corroborating evidence establishing that the defendants entered the country or were of a foreign nationality, and thus, did not establish the "corpus delicti" of their crimes. They contend that their presence in the INS office, alone, is insufficient to corroborate their confessions to either entry or alienage, and that the government did not provide evidence of their Colombian nationality. In response, the government asserts that it presented circumstantial evidence corroborating the defendants' confessions, and that their convictions are sufficiently supported by the evidence.

With respect to the government's burden of establishing a crime when relying on the confession or admission of a defendant, the United States Supreme Court has held that

> [i]t is necessary . . . to require the Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement. Thus, the independent evidence serves a dual function. It tends to make the admission reliable, thus corroborating it while also establishing independently the other necessary elements of the offense.

Opper v. United States, 348 U.S. 84, 93 (1954). This principle has been followed in this Circuit. *See Government of the Virgin Islands v. Harris*, 938 F.2d 401, 410 (3d Cir. 1991) (upholding murder conviction when neither body nor murder weapon was found, but defendant admitted repeatedly to killing his wife).

Here, there is ample circumstantial evidence, in addition to the defendants' admissions, to support their convictions under 8 U.S.C. § 1325. The defendants' presence at the INS office and their being native Spanish speakers suggest that they are not from the United States. These facts corroborate their admissions that they traveled from Colombia and did not undergo proper admission procedures in St. John. It is not necessary, as the defendants aver, for the government to provide proof of <u>how</u> they entered — their physical presence here in St. Thomas clearly establishes that they, somehow, entered the United States. The defendants' admissions to agents Thomas and Monk that they were

from Colombia were sufficiently corroborated such that a reasonable fact-finder could rely on these admissions as proof of their alienage. *See, e.g.*, *United States v. Hernandez*, 105 F.3d 1330, (9th Cir. 1997) (affirming conviction where admission to alienage was corroborated by evidence of additional admission and illegal entry into United States). Considering this evidence in the light most favorable to the government, as I must, I conclude that the evidence sufficiently supports the defendants' convictions, and will affirm their convictions.

III. CONCLUSIONS

Upon consideration of the trial transcript, motions, and briefs before me, I conclude that the un-Mirandized statements of defendants Alomia-Ortiz, Gil-Munoz, and Chantri-Guzman to INS agent Monk were taken in violation of the Fifth Amendment, but that their admission constitutes harmless error because the defendants admitted to having been from Colombia and having entered the United States without proper inspection after waiving their *Miranda* rights. In addition, the evidence presented at trial sufficiently corroborated the un-Mirandized admissions of all four defendants and was sufficient to support their convictions under 8 U.S.C. § 1325(a). Accordingly, I will affirm the convictions.

ENTERED this 4th day of March, 2003.

FOR THE COURT:

_____/s/_____

Thomas K. Moore
District Judge

ATTEST: Wilfredo F. Morales
Clerk of the Court

By:_____
Deputy Clerk

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St. Thomas, U.S.V.I.
For the defendants.

ORDER

For the reasons stated in the opinion of even date, it is

HEREBY ORDERED that the convictions of Cristian Variela-Garcia, Yamily Alomia-Ortiz, Gustavo Gil-Munoz, and Yohn Balbino Chantri-Guzman are hereby **AFFIRMED.**

ENTERED this 4th day of March, 2003.

FOR THE COURT:

____/s/_____

Thomas K. Moore
District Judge

ATTEST: Wilfredo F. Morales
Clerk of the Court

By:_____
Deputy Clerk

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